

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

North Dakota,)	
)	
Plaintiff,)	SUPPLEMENTAL ORDER RE
)	PLAINTIFFS' MOTION
vs.)	TO COMPEL
)	
United States of America,)	Case No. 1:12-CV-125
)	(Lead Case)
Defendant.)	
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)	
Billings County, et. al.,)	
)	
Plaintiffs,)	
)	Case No. 1:12-CV-102
vs.)	(Consolidated Case)
)	
United States of America,)	
)	
Defendant.)	

In the table set forth below are the court's specific rulings with respect to the claims of attorney-client privilege made by the United States for the reasons expressed more generally in the Order Granting in Part and Denying in Part Plaintiff's Motion to Compel dated November 24, 2014, and filed contemporaneously herewith. The documents that the United States shall produce are those set forth in the column entitled "Requested by Plaintiffs."

No	USA Nos.	Description from USA Second Amended Privilege Log	Requested by Plaintiffs	Court's ruling
1	074916-074921	Redacted portion of USA074919 contains two sets of unsigned handwritten notes regarding communications with the Office of General Counsel regarding section lines. The first handwritten note is undated. The second handwritten note is dated Nov. 3, 1980.	USA074919	Redacted notes by client employee above the date of 11/3/80 are not privileged because no showing that information was communicated to counsel. Redacted notes under the date of 11/3/80 that reference OGC advice are privileged. Privilege, however, has been waived since the reference appears to relate to 1980 opinion by OGC attorney Wood. Produce full copy of document sans redactions.
2	075171-075173	Redacted portion consists of handwritten notes that discuss the content of the Jan. 12, 1962 Office of General Counsel opinion by Morris Hankins, Attorney in Charge, Office of General Counsel (USA075171).	USA075171	Any privilege has been waived because redacted material relates to 1962 opinion by OGC attorney Hankins. Produce full copy of documents sans redaction.
3	076370-076382	Redacted portion of USA076370 includes excerpted text from and discussion of the Jan. 12, 1962 Office of General Counsel opinion by Morris Hankins and 1975 consultation with the Office of General Counsel regarding <u>Small v. Burleigh County</u>	USA076370	Redaction references privileged 1962 opinion of OGC attorney Hankins, but privilege has been waived. Produce full copy of document sans redaction.
4	076417-076420	Redacted portions of USA076417 and USA076419 discuss the Jan. 12, 1962 Office of General Counsel opinion by Morris Hankins.	USA076417, USA076419	Redactions reference privileged 1962 opinion of OGC attorney Hankins, but privilege has been waived. Produce full copy of documents sans redaction.

No	USA Nos.	Description from USA Second Amended Privilege Log	Requested by Plaintiffs	Court's ruling
5	076422	Nov. 13, 1980 memorandum by Forest Supervisor D.C. McIntyre to Regional Forester that discusses substance of July 3, 1980 Office of General Counsel opinion by James Woods, discusses communications with the Office of General Counsel, requests further review of the July 3, 1980 opinion and supplies information regarding the potential effect of that opinion.	USA 076422	Document references 1980 attorney privileged opinion of OGC attorney Wood, but privilege has been waived. Also, no showing that the contents of this document were presented to OGC counsel in Washington. Document shall be produced.
6	076452-076455	Redacted portion of April 24, 1985 memorandum by C. Wolf regarding possible trespass and road construction (USA076453) discusses content of the 1980 Office of General Counsel opinions by James Woods.	USA076453	Redaction references privileged 1980 opinion of OGC attorney Wood, but privilege has been waived. Document shall be produced sans redaction.
7	076983-076984	Jan. 12, 1962 opinion by Morris Hankins to the Regional Forester responding to and referencing Supervisor's memorandum of December 13, 1961 requesting legal advice relating to the issue of alleged section line rights-of-way in North Dakota.	USA076983-USA076984	1962 opinion of OGC attorney Hankins is privileged, but privilege has been waived. Document shall be produced.
8	077004-077006	Redacted portion of USA077005 discusses substance of the Jan. 12, 1962 Office of General Counsel opinion by Morris Hankins.	USA077005	Redaction references privileged 1962 opinion of OGC attorney Hankins, but privilege has been waived. Documents shall be produced sans redaction.
9	077034-077036	Nov. 20, 1980 Memorandum from V.R. Price to Forest Supervisor enclosing the Nov. 10, 1980 Office of General Counsel opinion by James Woods relating to section lines in North Dakota and discussing communications with the Office of General Counsel.	USA077034-USA077036	Documents are privileged Nov. 1980 opinion of OGC attorney Wood or reference the opinion, but privilege has been waived. Documents shall be produced.

No	USA Nos.	Description from USA Second Amended Privilege Log	Requested by Plaintiffs	Court's ruling
10	077037	Dec. 11, 1962 Memorandum from Morris Hankins to Regional Forester responding to communication requesting legal advice regarding section lines and South Dakota.	USA 077037	1962 opinion of OGC attorney Hankins is privileged, but privilege has been waived. Document shall be produced.
11	077038	Jan. 22, 1962 memorandum attaching Jan. 12, 1962 Office of General Counsel opinion and discussing substance of the opinion (opinion itself is not attached to pdf). The memorandum references a prior memorandum to the Office of General Counsel requesting a legal opinion (also not attached).	USA077038	Document references privileged 1962 opinion of OGC attorney Hankins, but privilege has been waived. Document shall be produced.
12	077039-077042	Redacted portions of USA077039-USA077042 discusses substance of the Jan. 12, 1962 Office of General Counsel opinion by Morris Hankins and 1980 Office of General Counsel opinions by James Woods as well as subsequent communications between the Forest Service and the Office of General Counsel.	USA077039 - USA077042	Documents are privileged Nov. 1980 opinion of OGC attorney Wood or reference the opinion and the earlier privileged opinion of attorney Hankins, but privilege has been waived. Documents shall be produced sans redactions.
13	077047-077048	July 8, 1980 Memorandum from V.R. Price enclosing July 3, 1980 Office of General Counsel opinion by James Woods. The July 8, 1980 memorandum includes a handwritten note discussing substance of the Jan. 1962 Office of General Counsel opinion by Morris Hankins.	USA077047-USA077048	Documents are privileged July 1980 opinion of OGC attorney Wood or reference the opinion, but privilege has been waived. Documents shall be produced.
14	077050-077052	Redacted portion of USA077050 includes two sets of unsigned handwritten notes regarding communications with the Office of General Counsel regarding section lines. The first handwritten note is undated. The second handwritten note is dated Nov. 3, 1980.	USA077050	Redacted notes by client employee are not privileged except for that portion under the date 11/3/80 that reference OGC advice which is privileged. Privilege, however, has been waived since the reference is to OGC attorney Wood opinion. Document shall be produced sans redactions.

No	USA Nos.	Description from USA Second Amended Privilege Log	Requested by Plaintiffs	Court's ruling
15	077056	Nov. 20, 1980 Memorandum from V.R. Price to Forest Supervisor enclosing the Nov. 10, 1980 Office of General Counsel opinion by James Woods relating to section lines in North Dakota and discussing communications with the Office of General Counsel. Includes handwritten notes regarding subsequent communications with the Office of General Counsel.	USA077056	Document does not contain attorney-client privileged information, but, even if it did, the privilege has been waived because it relates to Nov. 1980 opinion of OGC attorney Wood. Document shall be produced.
16	077058-077063	Redacted portions of USA 077039-USA077040 discuss advice from the Office of General Counsel, 1962 Office of General Counsel opinion by Morris Hankins, and the 1980 Office of General Counsel opinion by James Woods. Also redacted is a copy of the 1962 Office of General Counsel opinion by Morris Hankins (USA077041-USA077042). [note the referenced document numbers appear to be in error and should be USA077058-USA077059 with respect to the first reference and USA077062-USA077063 for the second]	USA077058 - USA077063	Documents are privileged 1962 opinion of OGC attorney Hankins or reference the Hankins opinion and the Nov. 1980 privileged opinion of Wood, but privilege has been waived. Documents shall be produced sans redactions.
17	077064	Dec. 31, 1980 memorandum from Tom Coston, Regional Forester, to the Forest Supervisor for the Custer National Forest, discussing advice from the Office of General Counsel.	USA077064	Document references privileged opinion of OGC attorneys Wood and public letter of Hankins, but privilege has been waived. Document shall be produced.
18	077065-077073	Redacted portion of Apr. 24, 2002 letter discusses the substance of 1962 and 1980 opinions by the Office of General Counsel. Attachments to the Apr. 24, 2002 letter that either discuss or contain Office of General Counsel advice are redacted, including: the Dec. 31, 1980 memorandum from Tom Coston (same document as USA077064); Dec. 18, 1980 memorandum from David Filius discussing 1980 and 1962 opinions by the Office of General Counsel; and, the Jan. 12, 1962 opinion from the Office of General Counsel (same document as USA076983-USA076984).	USA077065 - USA077073	Documents are privileged 1962 opinion of OGC attorney Hankins or reference the opinion and the 1980 opinions of OGC attorney Wood, but privilege has been waived. Documents shall be produced sans redactions.

No	USA Nos.	Description from USA Second Amended Privilege Log	Requested by Plaintiffs	Court's ruling
19	077074-077076	Redacted portion of USA077074 discusses the substance of the Jan. 12, 1962 Office of General Counsel opinion by Morris Hankins.	USA077074	Redaction reflects privileged advice given by OGC attorney Hankins in 1962, but privilege has been waived. Produce the document sans redactions.
20	077078-077079	July 8, 1980 Memorandum from V.R. Price enclosing July 3, 1980 Office of General Counsel opinion by James Woods.	USA077078-USA077079	Documents are privileged July 1980 opinion of OGC attorney Wood or reference the opinion, but privilege has been waived. Produce the documents sans redactions.
21	077167-077169	Redacted portion of USA077168 discusses the substance of 1962 and 1980 opinions by the Office of General Counsel.	USA077168	Redaction reflects privileged advice given by OGC attorney Hankins in 1962, but privilege has been waived. Produce the document sans redactions.
22	077170-077171	Redacted portion discusses the substance of the 1980 Office of General Counsel opinions by James Woods.	USA077171	Redacted portion of document reflects privileged advice given by OGC attorney Wood in July 1980, but privilege has been waived. Produce the document sans redactions.

IT IS SO ORDERED.

Dated this 25th day of November, 2014.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court